

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Rosemary Muldowney and Rosemary Muldowney IRA (Claimants) v. Financial Asset Management, Inc. and Kacey Harold Kowars (Respondents)

Case Number: 02-05017

Hearing Site: Columbus, Ohio

Nature of the Dispute: Customers vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimants Rosemary Muldowney ("Muldowney") and Rosemary Muldowney IRA ("Muldowney IRA") hereinafter collectively referred to as "Claimants": David P. Meyer, Esq., David P. Meyer Co. L.P.A., Columbus, OH.

Respondents Financial Asset Management, Inc. ("FAM") and Kacey Harold Kowars ("Kowars") hereinafter collectively referred to as "Respondents": Rodger A. Marting, Esq., Circleville, OH.

CASE INFORMATION

Statement of Claim filed on or about: August 23, 2002.

Claimants signed the Uniform Submission Agreement: September 10, 2002.

Joint Statement of Answer filed by Respondents on or about: November 11, 2002.

FAM signed the Uniform Submission Agreement: November 9, 2002.

Kowars signed the Uniform Submission Agreement: November 9, 2002.

CASE SUMMARY

Claimants asserted the following causes of action: violation of the Securities Exchange Act of 1934; violation of Ohio Common Law; fraud; negligence; breach of contract; breach of fiduciary duty; respondeat superior; misrepresentations; omissions; negligent supervision; and violation of NASD Conduct Rules. Claimants' claim involved shares of MSTR, ATGN, AYS, AMSWA, CSCO, Artesyn, Deckers Outdoor Corp., and MCKC.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the sum of at least \$194,114.00; costs; forum fees; reasonable counsel fees; punitive damages; and such other and further relief as may be deemed just, proper, and equitable under the facts and circumstances presented.

Respondents requested dismissal of the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the commencement of the hearing on January 12, 2004, counsel for Claimants provided the Panel with a copy of Respondent Kowars' Petition for Chapter 7 Personal Bankruptcy that was filed on January 12, 2004 in the Federal Bankruptcy Court, as well as a Notice of Automatic Stay. The Claimants chose to proceed against the remaining Respondent, FAM.

Claimant moved for default against FAM because they did not have a corporate representative present. Attorney Marting represented FAM at the hearing. After due consideration, the motion was overruled.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. FAM is liable for and shall pay to the Claimants compensatory damages in the amount of \$73,500.00, plus interest at the rate of 10% per annum from the date of the award until the award is paid in full.
2. FAM is liable for and shall pay to Claimants the sum of \$300.00, to reimburse Claimants for the filing fee previously paid to NASD Dispute Resolution.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Financial Asset Management, Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: June 16, 2003 1 session	
One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: October 20, 2003 1 session	
Two (2) Hearing sessions @ \$1,125.00	= \$2,250.00
Hearing Date: January 12, 2004 2 sessions	
Total Forum Fees	= \$3,825.00

1. The Panel has assessed the forum fees totaling \$3,825.00 against FAM.

Fee Summary

1. Claimants are liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
Refund Due to Claimants	= \$1,125.00

As stated in the "Award" section above, FAM is liable and shall reimburse Claimants for the \$300.00 filing fee.

2. FAM is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$3,825.00
Total Fees	= \$9,025.00
<u>Less payments</u>	= \$ 830.00
Balance Due NASD Dispute Resolution	= \$8,195.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

W. Sean Kelleher, Esq.	-	Public Arbitrator, Presiding Chair
Walter W. Kocher	-	Public Arbitrator
John B. Glueckert	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

W. Sean Kelleher, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Walter W. Kocher
Public Arbitrator

Signature Date



John B. Glueckert
Non-Public Arbitrator

1-29-04
Signature Date

February 4, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

W. Sean Kelleher, Esq.	-	Public Arbitrator, Presiding Chair
Walter W. Kocher	-	Public Arbitrator
John B. Glueckert	-	Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date

Walter W. Kocher

Walter W. Kocher
Public Arbitrator

2/3/04
Signature Date

John B. Glueckert
Non-Public Arbitrator

Signature Date

February 4, 2004


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W. Sean Kelleher, Esq.	-	Public Arbitrator, Presiding Chair
Walter W. Kocher	-	Public Arbitrator
John B. Glueckert	-	Non-Public Arbitrator

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W. Sean Kelleher, Esq.
Public Arbitrator, Presiding Chairperson

2/2/04

Signature Date

Walter W. Kocher
Public Arbitrator

Signature Date

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Non-Public Arbitrator

Signature Date

February 4, 2004

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